Central Law Journal.

ST. LOUIS, MO., NOVEMBER 8, 1918.

THE TORRENS SYSTEM IN NEW YORK.

New York has adopted the Torrens System of Title Registration. We learn from our contemporary, *Law Notes* (N. Y.) that the Torrens Title League of New York has estimated the expense in New York of registering a title to be very moderate, and are hoping that this feature of the Act will commend it to property owners.

Whatever may be said about the defects of present Torrens laws, and they must be admitted to be defective in some respects, the general underlying conception is in line with progressive judicial thought. The trend of legal evolution is in the direction of an effort to make some provision for declaring the rights of parties in lieu of redressing their wrongs. One ought not to be kept in suspense with respect to the validity of a deed, contract, will or other instrument, especially under circumstances where all risk is upon him who acts in reliance thereon and who is thus made subject to the whim or caprice of the adverse party, who alone can set the machinery of the courts in motion after damage has resulted. In respect of deeds the danger and unfairness of subsequent claims is evident since such claims are of such uncertain character that not even the most alert title investigator can always uncover them. And when it is taken into consideration that subsequent use and improvement of land involves the expenditure of much additional capital and, in the case of a home, involves a peculiar sentimental value not capable of measurement, we at once see the justice of providing some judicial machinery to determine in advance the right of any party claiming title to land.

We cannot say, however, that we are enthusiastic over the actual experience under Torrens laws in the states that have adopted it. The people, in most cases, refuse to register their lands, and in California it is reported that money lenders refuse to lend money on Torrens certificates. A recent bill in the California legislature, making it a misdemeanor for a money lender to refuse a Torrens certificate, failed of passage, but the very attempt to pass such a bill indicates a serious undercurrent of opposition to the new reform.

The reason for the success of the Torrens system in Australia, and its apparent failure in the United States, is probably to be found in constitutional obstacles which, in this country, make it difficult to transplant this exotic reform into our institutional soil. The essential feature of the original Torrens act was the conclusive effect given to the Acts of the Register while, in this country no such effect can be given to any official act, with the result that resort must be had to the clumsy and expensive alternative of a court proceeding. When a Torrens Act was proposed to the legislature of Tennessee, some bright individual made the following astounding calculation, which immediately destroyed all interest in the new reform: The initial court proceeding under the Tennessee Act would cost, it was stated, not less than $75.00. As there was in Tennessee at that time, 540,000 separate holdings of real estate, the total cost of initial registration would have been forty million five hundred thousand dollars!

On the policy of the Torrens System, the CENTRAL LAW JOURNAL is thoroughly open-minded and will watch developments with no desire to see the system fail or succeed, but with an eager interest to discover what is needed to give the people the relief they demand from that most useless and ridiculous obstruction to material progress—an unmarketable title.

So far as we are able to appreciate the benefits of the Torrens System, it is merely an extension of the proceeding to quiet title. A judgment in such a proceeding cannot be effective as against those not properly brought into court. Even under the Torrens System, therefore, judgments fixing title are held not

to be conclusive against those living in the jurisdiction who were not personally served. And this would certainly be true of parties not in existence and who, taking by purchase and not by descent, cannot be concluded by a judgment against others who may be cited to represent them. Thus, in the case of an estate to A for life and after her death to the heirs of her body, it is generally held that a deed by A and all her children, C, D and E, does not pass title as against X, a child of C, where C died before A. After A's death, in such a case, X would take by purchase and not by descent through C. Therefore, no judgment against A and all her children fixing title could possibly bind X or, in fact, any other contingent remaindermen where the contingency is in respect of those who shall take on the death of the prior tenant.

Possibly many of the difficulties with titles could be eliminated by abolishing all uncertain interests in land, such as dower, curtesy and contingent remainders. At least this is the suggestion of the Legislative Committee of the American Association of Title Men, with whose splendid work lawyers and legislators should be better acquainted.

NOTES OF IMPORTANT DECISIONS.

TRADE UNION—PICKETING FOR BENEFIT OF LABOR UNION UNCONSTITUTIONAL. In 87 Cent. L. J., page 310, appears a discussion under the title: "Trade Union—Liability for Acts of Members Picketing Place of Business," the ruling considered being by Arkansas Supreme Court. Here we consider a decision by one of Texas Courts of Civil Appeals, in which it was held that a boycott by a labor union of a business invades the right of the owner of such business to conduct the same; that such right is personal and constitutional and is not to be impaired by the fact that the union is seeking its own benefit though the boycott, enforced by picketing, though this is without any purpose to injure such owner. Webb v. Cooks, etc. Union No. 748. 205 S. W. 465.

It was said: "It is insisted in behalf of appellees, and witnesses so testified, that the object was not to injure appellant, but to promote the legitimate purposes of the union to better the condition of the laboring man. Such purposes are, of course, worthy of all commendation, and by all lawful means are to be encouraged. But in the accomplishment of such purpose care must be taken not to invade the field of the rights of other persons, for it is fundamental with us that all men have equal rights, that no man, or set of men, is entitled to appropriate public emoluments or privileges, save for public services and that all of our citizens are entitled to the equal protection of our laws. The right of appellant to conduct his business upon terms of equality with all other persons is an essential part of his constitutional rights as an American citizen."

There is quoted from Allgeyer v. Louisiana, 165 U. S. 578, the following excerpt: "The right to follow any of the common occupations of life is an inalienable right. It was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence. * * * This right is a large ingredient in the civil liberty of the citizens."

This language, though general, is exclusive and is not to be frittered away as being mere high sounding phraseology.

Particularly in Texas a combination to bring about a boycott and to resort to picketing as a means for its success was held by the court to come under the anti-trust law of that state which denounces as illegal combinations of capital, skill and acts "to create, or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this state;" and another statute of the state which permits labor unions to "induce by peaceable and lawful means any person to accept any particular employment, or quit or relinquish any particular employment," etc., is subject by its very terms to a part of such latter statute which provides that: "Nothing herein contained shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies."

In this case it was said the labor union statute was as to matters between employer and employee, but this was a case where as the record showed there was no controversy between the owner and his employes. In other words, "sympathetic strikes" have no place in Texas law, even were it otherwise lawful to

set them in motion. It is unnecessary to discuss whether there is such a relative right in the owner of a business to conduct it as he pleases, or if it is one of the absolute rights as to which the United States Supreme Court speaks with unequivocal directness—the business being of "the common occupations of life."

It seems to us, however, that our legislatures would do well to stop their attempts at "camouflage," in pretending to give to labor what it has no power to grant.

BAILMENT—BAILEE NOT LIABLE FOR CONVERSION IN FAILURE TO PACK AND SHIP AT BAILOR'S REQUEST.—Because a bailee refuses to return goods in the manner demanded by the bailor is no reason for adjudging him to be guilty of conversion. Such was the decision of Judge Hassler in the Common Pleas Court of Lancaster Co. (Pa.), in the case of Sorrick v. Sheetz, 75 Leg. Int. 584.

In this case it appeared that plaintiff entered the employ of the defendant and, at his request, the defendant permitted him to bring with him about ninety pairs of pigeons, with crates, pans, troughs, etc. These, it was agreed, could be kept on the defendant's premises to be fed by him, for which the defendant was to get half of the profits realized from them. The plaintiff left the defendant's employ in March, 1916, going to Monongahela City, Pennsylvania. At the time he left he requested the defendant to ship some of the pigeons to him at Monongahela City, and subsequently he wrote the defendant to send them, as did his attorney in Allegheny City. At no time did the defendant refuse to give or let the plaintiff have his pigeons. In addition, he wrote to him before suit was brought, telling him he might come and get them.

The Court in granting a nonsuit, said: "Conversion is implied from a refusal by a bailee to surrender, because it is an assertion of title and right of possession in himself inconsistent with that of the owner: 38 Cyc., 2038, et seq. The plaintiff did prove a demand for their return, but not a refusal to surrender possession. All that can be inferred from defendant's failure to comply with plaintiff's request, or that of his attorney, was that he refused to go to the trouble and incur the expense of crating and shipping the pigeons to him at Monongahela City, and that cannot be construed as a refusal to surrender, as is contended. It is not the duty of a bailee to send chattels to their owner or deliver them where demanded: 38 Cyc., 2039. If there is no breach of duty on the part of a bailee, there is neither actual nor technical conversion: Aurentz v. Porter, 56 Pa. 115. A refusal to go to the trouble of packing and expense of delivering chattels to a distant point would be no evidence of an assertion of title or right of possession by a bailee.

RECEIVERSHIP—ABUSE OF PROCESS IN REPRESENTATIVE ACTION.—In Eggleston v. *et ux.*, 175 Pac. 34, decided by Supreme Court of the State of Washington, it was held, that where a stockholder, after initiating an action against a corporation for an appointment of a receiver as upon its insolvency, and after complaint and summons had been served, there was a contract between plaintiff and some of the other stockholders to settle with plaintiff for his failure to file his suit in court and prosecute his action, such agreement, though complied with, was contrary to public policy and unenforceable.

The court said: "The facts pleaded show that appellant (plaintiff) had instituted an action for appointment of a receiver, had invoked the process of the court and had duly served the summons and copy of the complaint. After this was done agreement was entered into which provided for the dismissal of the action and the withholding of the summons and complaint from filing. The legal effect of the action was to invoke the aid of the court, not only to protect the rights of the plaintiff, but to protect the rights of all other parties, including the creditors of the corporation, who had a right to come into the receivership proceeding. Where a party seeks to use the remedy given him by law for his own benefit, as well as that of others, he is required to proceed with the utmost fairness and with due regard to the rights of all parties concerned. He will not be permitted to use the process of the court to compel a debtor to secure his claim or suffer disastrous consequences of being thrown into bankruptcy, and contract, when his own claim has been secured, to dismiss the proceedings to the detriment of other creditors whose rights would be protected in the receivership proceedings."

The case of Paton v. Stewart, 78 Ill. 481, cited in support of the ruling, declares such an advantage to be one secured through "an abuse of the process of the law," and certainly, also, it looks like it could rightfully be called duress of goods, and what is obtained could be recovered of whomsoever committed a wrong.

Also, there is cited in further support of the ruling, Dieckman v. Robyn, 162 Mo. App. 67,

141 S. W. 717, which holds that the law in such a case would leave the parties where it finds them—a principle all right, except as other interests might be adversely affected, *e. g.*, this plaintiff was acting in a representative capacity. Those for whom he pretended to act should be in no way prejudiced, even had the agreement have been performed. They might recover, though one participating in the wrong were estopped.

IS STATE INSURANCE BETTER THAN PRIVATE INSURANCE AS A METHOD FOR DISTRIBUTING THE JOINT LIABILITY OF EMPLOYERS UNDER WORKMEN'S COMPENSATION ACTS?

An interesting topic, which has always been and still is a subject for discussion among those who have been promoting workmen's compensation laws, is as to which is the better method of distributing the joint liability of groups of employers—state insurance or private insurance.

Recently the Canada Law Journal gave an entire number of its publication to the subject of compensation for injuries to Canadian workmen, and in this very comprehensive article the subject of state or private insurance is discussed, and the conclusion reached that state insurance is preferable. With reference to this particular part of the discussion we quote as follows:

"The one feature upon which there is not an agreement of opinion is the devising of the best method for distributing this joint liability among the whole group of employers. After a law has been adopted doing away with all of the old defences and technicalities, removing the possibility of litigation, delay, indefiniteness, uncertainty and high costs of settlement, the question still remains for an answer: Shall the employers be merged in compulsory mutual insurance societies under Government control or shall they be compelled to take out policies in private casualty companies under Government regulations? These two systems have each certain variations. For example, in regard to mutual insurance, in some cases, such associations are self-governing; in others, state regulated; in some, each class of allied employers contributes to a class fund from which awards are made for accidents happening within the class; in others, the industries are classified only for the fixing of rates while compensation is paid from the common fund into which the payments from all classes go. In regard to casualty company insurance, in some cases the Government allows the rates fixed by the companies; in others the rates are finally determined by a Government Board; in some cases the companies deal directly with the employers and pay any awards directly to the persons who are to receive them; in other cases, the insurance policies are deposited with a Government Commission by whom all awards are made and to whom they are paid for transmission to the proper persons. But regardless of these individual variations the two methods stand opposed to each other as fundamentally different in principle and in operation. Because both systems are now in active operation in Canada, each with its advocates and opponents, and because future development in other provinces will be compelled to follow the one course or the other, it seems necessary to discuss here the relative merits and defects of the two. Ontario, Nova Scotia and British Columbia, as the reader will recall, have mutual insurance, while Manitoba has placed hers in the hands of private companies under strict Government control.

"Dealing first with casualty company insurance, we find certain arguments advanced in its favour.

(1) "It leaves the employer free to choose his own method of providing adequate compensation for his employees; the law can only require that the compensation be just and adequate, but has no right to interfere with the methods for carrying on

private business. This argument raises such a fundamental distinction between two diametrically opposed ideals of life, of business and of government, that it cannot be discussed fully here. It may be remarked merely that the consciousness of the modern world has laid down the principle once and for all that because all members of society are so closely dependent upon one another, no man's conduct or business can ever again be regarded as an exclusively individual matter.

(2) "Company insurance is the most convenient and the safest for the employers. That it is convenient and safe is beyond all dispute, but that it is the most so remains unproven; experience on this continent is as yet so inconclusive that from the same mass of facts, advocates of opposing systems secure ingenious arguments for their claims.

(3) "'It furnishes complete indemnity at fairly differentiated level rates, may readily be combined with insurance of other liabilities and carries with it expert inspection of boilers, elevators, machinery, etc.' With the exception of the combined insurance, these are all to be reasonably expected as the outcome of such mutual associations as have so far gone into operation and the possibility of combining insurance is not in itself of weight.

(4) "A favorite line of argument is made up of prophecies as to the disaster and uncertainty that are almost certain to be the outcome of mutual or state insurance. Experience has proven prophecy to be oftentimes a dangerous argument; it becomes most effective when translated into history.

"We must turn now to mutual insurance, particularly when under state control as in Germany, Ontario and United States. This is the form which seems to be in the ascendant and consequently has received the most serious consideration from its opponents. Some strong arguments have been urged against it.

"The German system for compensation has been longest in operation and has received the strongest laudation from its friends and the most severe condemnation from others.

"Two pamphlets have been circulated widely in this country, both of which are written by German authorities and criticized quite severely the German system. The first appeared in 1911 from the pen of Dr. Ferdinand Friedensburg, a retired member of the governing body of Germany's Imperial Insurance Department. The author was originally appointed on the board to represent the ultra-conservative element who opposed the whole insurance scheme. The criticisms concern various details of administration, but may be said in general to concern the spirit in which the system is carried out, there being too much solicitude for the working men. This encourages fraud and an over anxiety to get on the funds as pensioners. The pamphlet has been said to carry less weight in Germany than with foreign reviewers. The present director of the German Imperial Statistical Department has warned us not to take the pamphlet too seriously, as the author has always been regarded in his own country as an extremist. One who has analyzed carefully all his contentions summarizes them as sarcastic, biassed and often inconsistent and self-contradictory. Their chief virtue lies in the fact that they give a needed warning against the danger of allowing the administration of a system to be guided by a short-sighted humanitarianism, which of course is readily possible.[1]

"In 1914 there was issued in this country a translation of a large pamphlet by Professor Ludwig Bernhard, of the University of Berlin, entitled 'Undesirable Results of German Social Legislation.' This booklet deals, as does the one just referred to, with the whole scheme of social insurance, but includes pertinent references to compensa-

(1) "The Practical Results of Workmen's Insurance in Germany," published by The Workmen's Compensation Service and Information Bureau, 1 Liberty street, New York. See also Interim Report of the Ontario Commission, p. 128.

tion for injuries. The important counts in the author's indictment which concern us are: the granting of pensions leads to feigned incapacity and unexpected slowness of recovery even to the extent of actual attempts retarding recovery from wounds, etc.; the fact of being insured produces, even in the case of slightly injured men, a nervous condition under which work becomes impossible; conversation on the part of friends and relatives suggests illness and weakness, and there has arisen what has been called an 'accident-law neurosis' as distinguished from 'an accident neurosis'; any reforms to the law to prevent impositions and injustices have become very difficult because no legislators want to risk the opposition of the labour vote; the fact that appeals can be taken by workmen without cost means that a great many cases have to be considered needlessly and this social legislation becomes administered for the promotion of party politics.[2]

"In regard to these claims we may say for one thing that the claims are too vague to be admitted as a wholesale indictment of a vast system that is too complicated to be condemned or approved upon isolated cases; Professor Bernhard has not given us statis tics by which we can compare the number of instances of fraud, malingering and neurosis with the total number of accidents for which compensation is made yearly. Again, the real indictment of the book is drawn against human nature and does not stand against a system devised to give as just awards as possible to injured men; the fact that men often deceitfully loaf at their daily work is no reason why men should not be engaged in large numbers to work at a daily wage. Further, the fact that the system often becomes a political instrument is an argument not against the essentials of the system, but against the political ideals of the public; because Government bridges are sought by constituents and given by legislators as political gifts in return for popular support is no reason why rivers should be left without bridges.

"The book is singularly lacking in constructive suggestions and does not attempt to deal with the whole insurance system from a broad outlook. It is being circulated in this country by an organization whose head office is the office of a casualty company and whose officers are presidents of casualty companies; it should be pointed out that what these casualty companies want is not the refusal to adopt the German standards of compensation or methods of awarding what the compensation shall be; they seek, quite legitimately of course, the right to sell casualty insurance in States where compensation is provided for by law; they do not want the Government to create a monopoly either for itself or for mutual associations authorized by it; it must be remembered that should their demands be granted, as in Manitoba, where all the business is turned over to them, the evils mentioned in Professor Bernhard's book would be just as liable to appear as if the casualty companies were ruled out, as in Ontario.

"The real issue between the casualty companies and mutual associations is a question of relative cost and service rendered. Before the British Columbia Act was drawn up, the committee of investigation visited the United States and paid special attention to the much discussed question of insurance carriers. In its report we read:—

" 'From a careful consideration of evidence, it is apparent that the casualty insurance companies, from the standpoint of economy, have utterly failed to show as good results as either the mutual companies or the state-administered funds, and this both as to rates of premiums and costs of administration. The economic waste of allowing casualty insurance companies to carry on this class of insurance unquestionably amounts to many millions of dollars each year, and when we consider that this money is either secured from increased premiums from employers or retained from moneys which otherwise might be paid to injured

(2) Issued by Workmen's Compensation Publicity Bureau, 80 Maiden Lane, New York.

workmen, the advantage in eliminating the waste is apparent. The evidence also discloses that the cost of administration through a State Fund is less than through a mutual insurance company and that such cost in case of an exclusive State Fund is less than where the State Fund is operated along with competing insurance companies.' The average expense of casualty companies is given as about 40 per cent of earned premiums; for State Funds it ranges from 7 to 17 per cent and for Mutual Funds around 18 per cent. The claim that State Funds are insolvent has been true in some cases where the commission was not given authority to fix adequate rates, but where such authority is given solvency can readily be assured."[3]

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(3) For comparison of leading methods, see "American Labour Legislation Review," v. 3, No. 2, p. 245. Vol. 5, No. 1, gives the results of three years' experience under the New Jersey law.

IMPORTANCE OF THE MOVEMENT FOR UNIFORM STATE LAWS

One of the ideals of civilized man is the attainment of perfect and absolute justice as between man and man. Anyone, therefore, who contributes anything toward the realization of that ideal has rendered a distinct service to mankind and erected for himself a memorial more eternal than granite and more reliable than the fame of a conqueror. Hammurabi, Justinian and Napoleon were great warriors, but the flight of time that slowly but relentlessly scatters the dust of oblivion upon all their war-like achievements leaves untouched the magnificent codes of law that bear their names.

The history of the evolution of law shows clearly the path of its proper development. At first, simple customs, then religious or ethical ideals, then the growth of commerce, each contribute their part to the fundamental principles of a nation's law. Then again, as social and commercial life becomes more complex, learned men, called jurists, taking these fundamental principles of justice as premises, by a process of syllogistic reasoning, extend the application of the old rules to new conditions, necessitating the making of finer distinctions capable of being appreciated only by those who have made a careful study of legal principles and the processes of government. The last step is codification. When society has reached an advanced state of development and its jurists have spun the fine threads of its jurisprudence to the very limits of ordinary human experience, it becomes necessary to gather together the scattered threads and weave them into an orderly fabric of law. This Justinian did for the civil law, the greatest system of law ever evolved by the processes of individual and national development. This great Roman Code is today the basis of the jurisprudence of more than two-thirds of the civilized nations of the world.

The common law of England, although very materially modified by the civil law through its equity jurisprudence, has nevertheless, in large part, grown up as a distinct system of law. It has passed through the first two stages of its growth and is today entering the final stage of its development. In England all of the important and well settled subjects of law have been topically codified, and the process is just beginning to operate in this country, and the most effective agency through which this process of codification is being carried on is the Conference of Commissioners on Uniform State Laws.

In 1884 a committee of the American Bar Association, composed of John J. Dillon, David Dudley Field, George G. Wright, Seymour D. Thompson and Cortlandt Parker, all of them great lawyers and jurists, made a report to that Association, the essential recommendation therein being contained in one sentence of the report, to wit:

"The law itself should be reduced, so far as its substantive principles are settled, to the form of a statute."

In 1890, as a result of the acceptance of the idea that the codification and uniformity of the law of all the states on subjects whose principles were well settled was necessary to further development of our jurisprudence, the great Conference of Commissioners on Uniform State Laws was organized. This Conference is not an adjunct to any other organization, but is a delegated body representing every state and territory.

The success of the Conference was immediate and very significant. The first subject of codification was the law of negotiable instruments. After many years of careful, painstaking work all the essential principles of the law on this subject were carefully stated, arranged and classified, and the result was the "most consummate piece of topical codification" in the history of the common law. Its adoption by the legislature of 48 states within a very few years after its completion is one of the outstanding facts of current legal history and demonstrates the fact that the time was ripe for a codification of the law of that subject.

Other codes soon followed, to wit: The Warehouse Receipts Act, now the law of 36 states; the Bills of Lading Act, now the law of 17 states; the Uniform Sales Act, now the law of 14 states; the Stock Transfer Act; now the law of 11 states; the Partnership Act, now the law of 11 states; the Probate of Foreign Wills Act, now the law of 11 states; the Family Desertion Act, now the law of 9 states; the Uniform Divorce Act, now the law of 3 states; the Marriage Evasion Act, now the law in 3 states; the Land Registration Act, now the law of 3 states; the Workmen's Compensa- Act, now the law in 3 states. The Corporation Act is still under discussion, and will probably be the next important code to be promulgated.

While a dozen topical codes seems to be a very meager result of twenty-eight years of the life of such a Conference, the fact is quite the contrary. It may be true that almost any legislature, in a seventy-day session, can turn out three and four times that amount of legislation, yet, as we have learned to our sorrow, there is much difference in the after effects of such legislation. Most of our state laws today are so crudely and clumsily drawn that they provoke never ending litigation; whereas, under all the Uniform Acts litigation is reduced to a minimum. This is because of the care employed in drafting these laws. The delegates to the Conference of Commissioners on Uniform State Laws are men of great learning and experience—lawyers, judges and law school professors. These men, leaders in their profession, unobtrusively and without compensation, have been devoting their best efforts to the codification of American law. Although commissioned by the governor or legislature of their respective states, the commissioners do not work under pressure of any kind, and, by disposition and training, are not men who are impatient for quick results. Rather is it their idea that one perfect code on any particular subject is worth a thousand proposed reforms ill-considered and hastily prepared.

In drawing up a code of laws that is expected to abide the test of time and intense controversy, the important thing is not haste but accuracy, careful phrasing and the exact use of words to avoid confusion and reduce the necessity for construction on the part of the courts to a mimimum. The most noticeable characteristic of much modern legislation is the haste with which it is enacted, as if the most important thing about a bill is to get it on the statute books as quickly as possible. Much of this legislation, passed in the interest of the public welfare and embodying ideas of reforms of great value, is defeated in its purpose by the carelessness with which it is constructed, yet, nothwithstanding this very evident fact, the people are sometimes inclined to blame the courts for not effectuating

the intention of the legislature rather than the awkward and incompetent manner of the legislature itself in discharging its duty. If all proposed laws of a general nature were first submitted to the careful consideration of a body of experts like the Commissioners on Uniform State Laws, they would seldom fail of their purpose and would give rise to very few serious problems for courts to unravel.

Apart, therefore, from the primary idea of the work of the Commissioners on Uniform State Laws to secure uniformity in the laws of the various states the most important incidental feature of their work and one which bids fair to rival the other in public estimation is the incalculable value of the service performed in the careful drafting of the laws which it proposes for codification. That the Commissioners themselves have become convinced of this important phase of their labors is evident by the zeal with which, after some debate, they insisted upon taking up such subjects as Workmen's Compensation and Land Registration. The argument was advanced that while these were new reforms and hardly included in the original purpose of the Commission on Uniform State Laws, nevertheless the legislatures were demanding legislation of this character and it would be preferable to offer them standardized codes at the very beginning of the movement for these reforms than to correct their mistakes later by more nearly perfect codes.

Thus has the idea of uniformity, important is this idea is, become to some extent subordinate in importance to the idea that the finished products of legislation turned out by the Commission on Uniform State Laws are, by reason of the thoroughness of the investigations made and the careful scrutiny of the language used, to be perferred to any bill or act drawn up by interested individuals or poorly informed committees. And some legislatures which have discovered this fact are showing their confidence in the work of the Commission by the promptness with which they pass every uniform act that is presented for their action thereon.

The idea of uniformity, however, is not an unimportant feature of the legislation drafted by the Conference of Commissioners on Uniform State Laws. In fact, in respect of the commercial codes, it is clearly the outstanding advantage. When the commerce of the nation began to overflow state boundaries and to bring together in commercial transactions the people of New York and California, it was intolerable that there should be 48 different rules of law applicable to a contract that daily passed from hand to hand, and from state to state in settlement of such transactions. When one puts into circulation a bill of exchange or promissory note it is impossible always for him to foresee or foretell the extent of its peregrinations or where it may become necessary for some subsequent holder to enforce payment of it against the maker or indorsers. Nor is paper of such kind easily bought and sold in jurisdictions where the law is unnecessarily stringent or uncertain. Capital is shy; it demands absolute security and definite assurances of the obligations assumed and rights created by the contracts under which its investment is made. The Uniform Negotiable Instruments Law has supplied these assurances and made definite and certain the law of all the states that adopted it. So clearly is this fact proven that it has been generally recognized for many years that interest rates were higher in all states which had failed to pass the Uniform Negotiable Instruments Law.

Moreover, the principle of uniformity embodied in such legislation guarantees a more intelligent and accurate construction of the provisions of the laws. It requires the courts of every state to have regard for the decisions of every other state which construe any of the provisions of a uniform act. This tendency

checks occasional judicial lapses and gives to every appellate court the benefit of the work and thought of every other appellate court, whose decisions it is bound to respect in order to carry out the expressed legislative intention, that every uniform law shall not only be uniform at the time of its passage but by judicial construction shall be thereafter kept uniform with the law of every other state. While this ideal of uniformity is not possible of absolute realization it nevertheless exercises a profound and beneficial influence in raising the quality of judicial interpretation.

What has been said about the commercial codes where uniformity and thoroughly scientific codification has been found to be so desirable, can also be said, to a less degree perhaps, of laws relating to the transfer, incumbrance and devolution of the title to real property; and this subject is bound very soon to engage the serious attention of the Conference. The old principle of the common law that the **lex rei sitae** shall govern all transactions affecting land will probably never be abandoned, in view of the fact that the sovereignty of a state is so peculiarly dependent on its absolute dominion over its own land. But as transactions between non-residents in respect of land in other states occur with greater frequency it will become more and more important that rules of law affecting the transfer of title shall be as nearly uniform as possible, and that all estates or other interests in real property created by law, such as dower, curtesy, homestead, etc., shall either be abolished or regulated by such uniform provisions as to enable a non-resident owner or purchaser to deal with property in a foreign state with perfect freedom and security. When this is done real estate will become a negotiable asset and assume once more its supremacy over all other forms of investment.

The Conference of Commissioners on Uniform State Laws has already sought to make uniform the law regulating the recognition of the foreign probate of wills and this law wherever enacted, is already exerting a beneficial influence. The Conference has also adopted a model Land Registration Act, which embodies the principles of the so-called Torrens System of Title Registration. The adoption of this code by the Conference had the same purpose in view as in the case of the Workmen's Compensation Law: not to codify existing, settled law but to forestall carelessness and empiricism in the drafting of laws on important subjects of current reforms that seemed to be gaining in public favor and demanding immediate recognition.

It may be that the Torrens System, in its present form, is not all that it should be, but it does seem reasonable that if the general idea of this reform is meritorious and therefore likely to be generally adopted, the legislation which first put the idea into operation should be so carefully drawn as not to provoke endless and costly litigation by reason of careless draftsmanship. If, as the subject develops, it appears that certain amendments are necessary, suggestions to that effect can be made to the Commissioners on Uniform State Laws who, not being in any sense propagandists or reformers, would be quick to appreciate defects in the act and to make and recommend the necessary amendments thereto. If a registered title of some kind is desired by the business community it ought to be secured in a form and by a method that will create the least hardship and expense. The action of the Farm Loan Board in favoring regis- of that idea to men having capital to invest. The reason is the same as in the case of the Negotiable Instruments Law, to-wit: the desire for certainty and uniformity. If real estate is ever to become a commercial asset it must be set free from all its common law infirmities. Dower, curtesy, contingent remainders, and other feudal excrescences should be abolished, and the state, by some inexpensive

procedure, should be able to settle the title to any tract of land so that a deed can pass as readily from hand to hand as a bond or a certificate of stock.

After all, the most important feature of the work of the Conference is the advantage derived from the interchange of ideas of men who think, and who, being men of affairs, are able to contribute the benefits of the common experiences of the people of all states in the united effort to improve the laws of the country and wipe out the unnecessary and annoying differences in the laws of the several states with respect to matters and transactions of an interstate character. It is unnecessary to argue that this interchange of view and discussion of the laws of all the states will tend not only to bring uniformity out of the endless conflict and divergencies of the laws of the various states, but will raise the standard and quality of legislation and reduce to the clear and unmistakable terms of a statute the mass of case law now so overwhelming as to confuse and confound even the most painstaking lawyer.

Another effect of such topical codification will be to reduce the amount of litigation. For when the law is clear disputes will not readily occur. A great part of the litigation of the courts arises over differences of opinion as to the meaning and construction of statutory provisions. Some of these provisions are so loosely drawn as forever to baffle the courts' endeavor to construe their meaning. Where a law, however, is carefully drawn by those acquainted from experience with the fullest extent of its operation, it forecloses, by its very simplicity and clearness, all dispute and argument.

Such possible results, some of which have been already realized, abundantly justify the creation and continued existence of the Conference of Commissioners on Uniform State Laws. Especially is this true in a day like this when democracy is on trial to prove its assumption that it is the best form of government ever devised by man. If the world is to be made safe for democracy and if democracy is to be made safe for the world, we must give our most earnest thought at this time to improve the law and facilitate the administration of justice, which are the very corner stones of popular government.

ALEXANDER H. ROBBINS.

St. Louis, Mo.

BILLS AND NOTES—NEGOTIABILITY.

UNION NAT. BANK OF MASSILLON, OHIO, v. MAYFIELD et al.

Supreme Court of Oklahoma. Sept. 3, 1918.

174 Pac. 1034.

(*Syllabus by the Court.*)

A promissory note for the payment of a sum certain, on a date named, and otherwise negotiable, is not rendered non-negotiable by a stipulation therein to the effect that, if the note be not paid on or before maturity, it shall bear interest from date at an increased and fixed rate.

SHARP, C. J.: At Capron, Okl., on June 4, 1914, defendants W. A. Mayfield and C. B. Mayfield executed their promissory note to the Geo. O. Richardson Machinery Company, of St. Joseph, Mo., in the sum of $835, payable at the Capron State Bank of Capron, Okl.; the provision with respect to the payment of interest being as follows:

"With interest at the rate of 9 per cent per annum, payable annually, from date until paid: Provided, however, if note is paid on or before maturity, interest shall be only 7 per cent."

On the back of the note is contained the following printed provision:

"For value received, I hereby guarantee the payment of the within note, and any renewal of the same, and hereby waive protest, demand, and notice of demand, and nonpayment, and suit against the maker, and consent that the payment of this note may be extended from time to time without affecting any liability thereon."

Immediately following is a printed date line in blank. After the date line is another blank line, intended for the signature of the person signing the foregoing guaranty and waiver, below which are seven blank lines, intended for

use in the indorsements of partial payments. Two of the blank lines are filled out, the first showing a credit on June 4, 1914, of $140; the second, a credit on June 13, 1914, of $14.20. Below the blank credit lines is the following indorsement:

"Pay to the order of the Russell & Company. Geo. O. Richardson Machinery Co. John H. Myers, Treasurer."

Immediately following the indorsement of the Machinery Company is the additional indorsement:

"The Russell & Company, by Geo. H. McCall, Treasurer."

Action was brought against the makers on December 14, 1914, by the plaintiff bank, the owner and holder thereof by purchase from the last indorser, the Russell & Company.

The case turns upon the negotiability of the note. The trial court was of the opinion that the note was nonnegotiable, and permitted the defendants to interpose their defense of a breach of warranty and fraud practiced upon them by the agent of the machinery company, and thus to defeat a recovery on the note in the hands of the indorsee. It is urged by the defendant in error that the note is nonnegotiable, because (1) of the provisions respecting the payment of interest; and (2) on account of the printed matter on the back of the note, which they claim formed a part of the endorsement, thereby destroying the negotiability of the note.

Do the words "with interest at the rate of 9 per cent per annum, payable annually, from date until paid: Provided, however, if note is paid on or before maturity, interest shall be only 7 per cent.," affect the negotiable character of the note? Counsel cite in support of their contention the following cases: Randolph v. Hudson, 12 Okl. 516, 74 Pac. 946; Cotton v. John Deere Plow Co., 14 Okl. 605, 78 Pac. 321; Dickerson v. Higgins, 15 Okl. 588, 82 Pac. 649; Clevenger v. Lewis, 20 Okl. 837, 96 Pac. 230, 16 L. R. A. (N. S.) 410, 16 Ann. Cas. 56; Clowers v. Snowden, 21 Okl. 476, 96 Pac. 596; Farmers' Loan & Trust Co. v. McCoy & Spicey Bros., 32 Okl. 277, 122 Pac. 125, 40 L. R. A. (N. S.), 177; Bracken v. Fidelity Trust Co., 42 Okl. 118, 141 Pac. 6, L. R. A. 1915B, 1216; Stutsman County v. Wallace, 142 U. S. 312, 12 Sup. Ct. 227, 35 L. Ed. 1018. The Cotton Case simply held that the provision for payment of attorney's fees in a promissory note, as the law then stood, destroyed the negotiable character of the note. In the Dickerson Case it is not clear on what grounds the note was declared nonnegotiable, though as in the Cotton Case (cited as an authority) it contained a provision for the payment of attorney's fees. The Clevenger Case also contained a provision for the payment of an attorney's fee and was held to be nonnegotiable. The Clowers Case was also held not to be negotiable because of a provision for the payment of an attorney's fee. In the Farmers' Loan & Trust Co. Case the note was held to be nonnegotiable because of a stipulation providing that, if paid within 15 days from date, a discount of 5 per cent. would be allowed. In the Bracken Case the note provided for "interest at 6 per cent per annum before maturity, and thereafter with interest at 10 per cent per annum until paid, interest payable with note," and was held to be nonnegotiable. The rule announced in the Bracken Case was disapproved by the subsequent opinion in Security Trust & Savings Bank v. Gleichmann, 50 Okl. 441, 150 Pac. 908, L. R. A. 1915F, 1203, and we think correctly so. The case of Hegeler v. Comstock, 1 S. D 138, 45 N. W. 331, 8 L. R. A. 393, followed by the territorial Supreme Court in Randolph v. Hudson, 12 Okl. 516, 74 Pac. 946, was disapproved in Citizens' Savings Bank v. Landis, 37 Okl. 530, 132 Pac. 1101, as well as by the opinion in the Gleichmann Case, and cannot therefore be considered as an authority The notes involved in the several cases cited and arising in this court were all made prior to June, 1909, during which month the present negotiable instrument statute was adopted. Chapter 24, p. 387, Sess. L. 1909. A negotiable promissory note is defined by section 4234, Rev. L., as follows:

"A negotiable promissory note within the meaning of this chapter is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer."

While by section 4051 an instrument, to be negotiable, must conform to the following requirements:

"First. It must be in writing and signed by the maker or drawer; second, must contain an unconditional promise or order to pay a sum certain in money; third, must be payable on demand, or at a fixed or determinable future time; fourth, must be payable to order or to bearer; and fifth, where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty."

The sum payable is a sum certain, within the meaning of the law, although it is to be paid: First, with interest; second, by stated installments; third, by stated installments, with the provision that upon default in the payment of any installment, or of interest,

the whole shall become due; fourth, with exchange, whether at a fixed rate or at the current rate; fifth, with costs of collection or an attorney's fee, in case payment shall not be made at maturity. Section 4052, Rev. L. Section 4055 provides that an instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which, first, authorizes the sale of collateral securities in case the instrument be not paid at maturity; second, authorizes a confession of judgment if the instrument be not paid at maturity; third, waives the benefit of any law intended for the advantage or protection of the obligor; fourth, gives the holder an election to require something to be done in lieu of payment of money. It is also provided that nothing contained in section 4055 shall validate any provision or stipulation otherwise illegal.

An examination of these several provisions leads us to conclude that there is nothing contained therein, or in the present negotiable instrument statute, which in the instant case tends to make the amount payable uncertain within the meaning of the statute. The provision with respect to interest means nothing more nor less than that interest was payable from date until maturity at 7 per cent per annum, but, if not paid when due, it should bear interest at the rate of 9 per cent per annum from date. In Citizens' Savings Bank v. Landis, supra, it was held that an instrument, which in its terms and form was a negotiable promissory note, did not lose that character because it also provided that an additional rate of interest should be paid after maturity. This rule finds support in many of the authorities, as may be found from a reading of the cases cited in 8 Corpus Juris, § 253, where it is said that under the Negotiable Instruments Law not only may a provision be made for reserving interest after maturity, but for an increased rate of interest. The note could have been discharged on or before maturity by the payment of interest from date at the rate of 7 per cent per annum; if not paid then, it could have been paid at any time thereafter upon the payment of interest at 9 per cent per annum, payable annually. As stated by that eminent jurist, Justice Brewer, in Parker v. Plymell, 23 Kan. 402, in a case involving a somewhat similar provision:

"Clearly these words do not destroy the negotiability of the paper. They do not leave uncertain either the fact, the time, or the amount of payment. Indeed, up to and including the maturity of the notes, they are entirely without force. They become operative only after the notes are dishonored and have ceased to be negotiable, and then there is no uncertainty in the manner or extent of their operation. They create, as it were, a penalty for nonpayment at maturity, and a penalty the amount of which is definite, certain, and fixed."

Because of the error of the court in holding the note to be a nonnegotiable instrument, and the consequence attaching thereto, the judgment is reversed, and the cause remanded for a new trial. All the Justices concurring.

NOTE.—*Note Providing for Increase of Interest if Not Paid at Maturity.*—The note in the instant case is singular in that it provides that, if it is not paid at maturity it is to run at a higher rate from its date than were it paid at its due date. This is the effect of the note though it is stated to run at the higher rate from date, but this higher rate is to be reduced, if the maker exercises his option to pay the note when it falls due.

The more natural expression would be to make the note run for the lower rate and then, if the note were not paid at maturity, to provide that it should bear from its date the higher rate of interest. But, it would seem to come round to the same thing. The other way in form, however, indicates more clearly a penalty for non-payment at maturity and makes the contract run back to a previous time.

Security Trust & S. Bank v. Gleichman, 50 Okl. 441, 150 Pac. 908, L. R. A. 1915 F, 1203, which is cited as supporting the ruling in the instant case, refers plainly to a condition resulting from date, if the note were not paid at maturity, note has become dishonored, and, therefore, nonnegotiable, under general law. Thus, the note there provides for counsel fees "if sued" on.

In Parker v. Plymale, 23 Kan. 402, it was said that a provision for increasing the rate of interest from date, if the note was not paid at maturity, did not render the note non-negotiable, because the provision for increase did not become operative until after the note should have become nonnegotiable.

In Hope v. Barker, 112 Mo. 338, 20 S. W. 567, 34 Am. St. Rep. 387, a like ruling on same character of note was made, the note being expressed to run without interest "if paid at maturity" and "if not paid at maturity to bear ten per cent interest from date." The court said: "Interest is but an incident to the debt, and it is a thing as to which it is usual and customary to contract even in negotiable paper. Surely it cannot be maintained that a note ceases to be negotiable because of the addition of such words as 'with interest from maturity at the rate of eight per cent per annum.' * * * The only difference in the case just supposed and the one in hand is that here the principal is to bear interest from date of the note, if not paid at maturity, instead of bearing interest from and after maturity. In both cases the amount to be paid is fixed, definite and certain."

In Brown v. Vosen, 112 Mo. App. 676, Kansas City Court of Appeals questions the view taken by the Supreme Court in Hope v. Barker, *supra*. But in Smith v. Crane, 33 Minn. 144, 53 Am. Rep. 20, the ruling was on precisely the line taken in Hope v. Barker.

Also Clark v. Skeen, 61 Kan. 526, 60 Pac. 327, 49 L. R. A. 190, 78 Am. St. Rep. 337, showed a

note running at 6 per cent and provision that this should be 12 per cent from date if it remained unpaid for ten days after due. This case cites a great abundance of authority and among other cases that of Hope v. Barker, *supra*. Thus, the note before the court ran at 6 per cent, payable semi-annually, but to be 12 if either principal or interest remain unpaid for ten days after it became payable. At the option of holder both principal and interest became immediately due and payable.

The rule as to sustaining negotiability is that when a stipulation depends upon non-payment at maturity making it operative, this does not render the note uncertain in any respect.

Thus it was said by Taft, Cir. J., that: "A stipulation as to what shall be done in case the bill is not paid does not affect its character as a financial medium before it is dishonored. As soon as the bill is dishonored it loses its value as a negotiable instrument, for thereafter an indorsee gains no better title than the transferrer. It is unreasonable to hold that the negotiability of a bill is lost, because of a provision having no effect while it remains negotiable." Farmers' Nat. Bank v. Sutton Mfg. Co., 52 Fed. 191, 3 C. C. A. 1, 17 L. R. A. 596.

And in Salisbury v. Stewart, 15 Utah 308, 49 Pac. 777, 62 Am. St. Rep. 934, it was said, in substance, that a provision of the effect of what non-payment should bring, brought out more definitely what was the amount to be paid at maturity.

In Cudahy Pkg. Co. v. State Nat. Bk., 134 Fed. 538, 67 C. C. A. 662, it was said that: "An uncertainty which does not impair the functions of negotiable instruments in the judgment of business men ought not to be regarded by the courts."

But in Roads v. Webb, 91 Me. 406, 40 Atl. 128, 64 Am. St. Rep. 246, there was refinement of reasoning as follows: "It is said, that, if the note should be paid at maturity there would be no attorney fees. This is true. But, a note which, by its terms, is negotiable under the rules of law, does not lose that characteristic until merged in a judgment. The only infirmity attending its negotiation after maturity is that the indorser takes it subject to the same defense that the maker could have made against the original payee. A note cannot be negotiable before maturity and not negotiable after that, by reason of the terms of the note itself." But we may simply dispute the general truth of this, as to its effect upon a promissor engaging as to the maker generally and engaging only as to those who take with notice. Upon similar reasoning as in the Roads case is Jones v. Radatz, 27 Minn. 240, 6 N. W. 800.

It seems to us, however, that the rule which considers a note negotiable during and up to maturity is the true rule to be applied. C.

BOOKS RECEIVED.

Commercial Arbitration and the Law. By Julius Henry Cohen, author of "Law and Order in Industry;" "The Law: Business or Profession," and "A League to Enforce Industrial Peace." D. Appleton & Co., New York, 1918. Price, $3.00. Review will follow.

HUMOR OF THE LAW.

Two New Orleans negroes were discussing the possibilities of being drafted.

"'Tain't gwine do 'em any good to pick on me," said Lemuel, sulkily. "Ah certainly ain't gwine do any fightin'. Ah ain't lost nothin' oveh in France. Ah ain't got any quarrel with a-n-ybody, and Uncle Sam kain't make me fight."

Jim pondered over this statement for a moment. "You' right," he said at length. "Uncle Sam kain't make you fight. But he can take you where de fightin' is, and after that you kin use you' own judgment."

When Hon. Marshall D. Ewell of the Chicago bar was a young man, he was appointed with two other attorneys as a committee to examine candidates for admission to the Michigan bar. The examination was in open court before Judges Cooley, Campbell, Gram and Christiancy. The last question asked one of the candidates was:

"Suppose a tenant for life should hold over after the expiration of his term, what would you do?"

The candidate seemed puzzled. Judge Campbell kindly intervened, remarking that "the best thing to do would be to bury him."

An old-time New Orleans railroad man was fond of telling a post-bellum days story which loses nothing because of its antiquity. It seems that an order was issued from the head office of one southern system that no more personal valets should be carried on the pay rolls, and that the name of the bureau of which it was part should be painted on the door of each room.

Shortly after, the president, on a personal inspection tour, opened the door of a very small room and confronted an ancient negro of eminently respectable and respectful mien. Said the president:

"You black rebel, are you still here?"

"I shoa is," he bowed.

"And what pay roll are you on?"

"I doan't know what pay roll, Gineral, but I bresh de Colonel's coat, black his shoes, comb his hair and sech. He says to me jes like dis: 'Major,' he says, 'ef dat damned fool gineral come roun' hyar axin whut yoah air doin' hyar, jes tell 'm, askin' yoah honah's pardon, I'm in the department of accidental superfluousness.'"

WEEKLY DIGEST.

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Attorney and Client**—Disbarment.—Under Code Civ. Proc. § 287, subd. 1, providing that an attorney may be disbarred for conviction of crime involving moral turpitude, an attorney may be disbarred for conviction of such crime, although conviction is not had in a court of state disbarring him.—Barnes v. District Court of Appeal, Second Appellate Dist., Cal., 173 Pac. 1100.

2. **Bankruptcy**—Assignee.—Where composition offer provided that receivers and bankrupts should convey entire bankrupt estate, both partnership and individual, to one who had been selected by creditors to act as trustee in their behalf in carrying out details of composition, trustee selected by creditors was mere voluntary assignee of choses in action.—Guaranty Trust Co. of New York v. McCabe, U. S. C. C. A., 250 Fed. 699.

3.——Claim by Creditor.—Where stepfather died without having performed his contract to deed or will land to his stepson in consideration of the latter's services as son, the stepson was not estopped to sue stepfather's administrator for value of such services by the fact that in stepson's bankruptcy proceedings, during stepfather's lifetime, he omitted to schedule his claim against his stepfather; the claim being a mere expectancy dependent on contingencies.—Hooker v. Peterson, Tenn., 204 S. W. 858.

4.——Lien.—A controversy as to the existence of a lien on property of the bankrupt between a purchaser and one who asserted a lien by reason of installation thereon of a fire sprinkler system is a regular proceeding in bankruptcy, and judgment rendered therein, not being one allowing or rejecting a debt or claim, etc., within section 25, cl. 3, cannot be reviewed by appeal; petition to revise being appropriate.—Whitney Central Trust & Savings Bank v. United States Const. Co., U. S. C. C. A., 250 Fed. 784.

5.——State Law.—The rights of a banker, who advanced funds to purchase property and delivered the same to a manufacturer under a trust receipt, are, on bankruptcy of the manufacturer, governed by the state laws.—In re Bettman-Johnson Co., U. S. C. C. A., 250 Fed. 657.

6. **Banks and Banking**—Evidence.—In an action by a director against a bank to recover an alleged loan, in which all the directors had contributed a pro rata amount, a letter of another director to the bank was admissible to show that the contribution was a loan, and not a donation, where the letter contained the director's contribution and conditions, and was accepted by bank.—Andrews v. Cosmopolitan Bank, N. Y., 171 N. Y. S. 875.

7.——Indictment and Information.—Indictment under Hemingway's Code, § 897, for obtaining money on a check knowing that there are not sufficient funds or credit to pay the check is fatally defective, if it contains no allegation that accused intended to defraud the person to whom he presented, and who cashed, the check.—Herron v. State, Miss., 79 So. 289.

8. **Bills and Notes**—Accommodation Maker.—The accommodation makers of a note being alone sued, and recovery being had against them, they on paying the judgment can recover over against the real maker.—Bank of Dexter v. Simmons, Mo., 204 S. W. 837.

9.——Holder in Due Course.—Where payee indorsed note to a bank for value and before maturity, and bank indorsed it to holder for value, without recourse, after maturity, and neither bank nor holder had notice of any defense to the note until after buying it, holder is entitled to recover thereon, although note had been attached to maker's order, to be detached upon acceptance of order and shipment of goods, and, order having been countermanded before shipment, maker refused to receive goods.—Stevens v. Khetter, S. C., 96 S. E. 406.

10.——Joint Note.—One signing a joint note at request of principal debtor, in absence of any contrary undertaking with prior surety, may stipulate with and make it a condition of his signing that he signs only as surety to those signing prior to himself.—Pope v. Hoefs, Minn., 168 N. W. 584.

11.——Without Recourse.—Where payee of note on being presented note for payment wrote "without recourse" after his indorsement, failure of the holder to disavow the alteration after knowledge thereof was a ratification of a material alteration which operated as discharge of subsequent indorsers.—Freile v. Rudiger, N. J., 104 A. 142.

12. **Brokers**—Evidence.—For the purpose of showing what specifications of supposed infirmities in title were directed to the principal's attention, the written opinion of the customer's attorney as to the title is admissible in a broker's action for commissions.—Wood & Tatum Co. v. Basler, Cal., 173 Pac. 1109.

13. **Carriers of Passengers**—Change of Rate.—Order of Public Service Commission is not void, because the fare changed was agreed on by a franchise entered into prior to the enactment of the law creating the Commission; the law being designed to deal with conditions as they arise.—City of Portland v. Public Service Commission of Oregon, Ore., 173 Pac. 1178.

14.——Ejection.—Though conductor ejected newsboy from car on account of ill will the railway was liable for injuries where such ill will grew out of a former conflict between the conductor and plaintiff which arose in the line of the conductor's duty.—Griffin v. Kansas City Rys. Co., Mo., 204 S. W. 826.

15.——Ordinance.—A city ordinance forbidding jitney busses from taking up or discharging passengers within 700 feet of any street wherein a street car operates is invalid as being arbitrary and unreasonable.—Curry v. Osborne, Fla., 79 So. 293.

16. **Chattel Mortgages** — Counterclaim. — Where second mortgagee replevined property from mortgagor, and first mortgagee brought replevin against him, all damages sustained by second mortgagee because the first mortgagee took back the horse covered by the mortgage could be determined in such action; it being a proper subject of counterclaim, under Rev. St. 1909, § 1807.—McElvain v. Dorroh, Mo., 204 S. W. 824.

17.——Description of Property.—Description in mortgage, "One Ford touring automobile, model T, serial No. 621120, being the same automobile purchased of Wright November 2, 1915," was sufficient to charge the purchaser from mortgagor with knowledge, since automobile

could be identified by reference to recorded mortgage.—Wright v. Lindsay, 104 Atl. 148.

18. **Commerce** — Foreign Nation. — Under power to regulate commerce with foreign nations among the several states, Congress has right to determine condition upon which ships or persons and merchandise may enter or depart from those places designated as ports.—Hamburg-American Steam Packet Co. v. United States, U. S. C. C. A., 250 Fed. 747.

19. **Constitutional Law**—Estoppel.—Where a statute presumably prepared by the city authorized condemnation of land for sewer system and provided that immediately on appointment of the commissioners the lands needed should become vested in the city, and the city instituted proceedings under the statute, it could not afterwards be heard to say that it was powerless to carry out the privilege granted or was not bound by the statutes.—In re City of Syracuse, N. Y., 120 N. E. 203, 224 N. Y. 201.

20. **Contracts** — Building Specifications. — Where a building contract required the contractor to remove from premises within 24 hours after notice all material condemned by the architect, specifications calling for "approved brand of lime" contemplated a brand approved by the architect.—Drummond v. Hughes, N. J., 104 Atl. 137.

21. Mutuality.—Where railroad company which had contracted for purchase of fuel oil, became insolvent, and receivers were appointed, fact that seller could not, after company's default, be required to furnish oil without payment, does not destroy mutuality of contract.—Texas Co. v. International & G. N. Ry. Co., U. S. C. C. A., 250 Fed. 742.

22. **Corporations** — Reorganization. — Bondholders of coal company which was found to be adjunct of railroad company held not entitled to hold railroad company liable for coal company's debts, having consented to reorganization plan in which separate corporate existence of two companies were recognized.—New York Trust Co. v. Carpenter, U. S. C. C. A., 250 Fed. 668.

23.——Slander.—Where agent of corporation in purely social conversation with personal friend charged plaintiff with defalcations from corporation, such charge was not made within scope of agent's authority and will not support slander suit against corporation.—Buckeye Cotton Oil Co. v. Sloan, U. S. C. C. A., 250 Fed. 712.

24. **Divorce**—Condonation.—Where general conduct of husband which might have afforded wife cause for separation from bed and board had been condoned, mere fact that he sold community property and expressed intention to sell more would not of itself constitute sufficient cause of action.—Simon v. Meaux, La., 79 So. 330.

25. **Eminent Domain**—Abandonment of Proceeding.—Where the city of Syracuse, under Laws 1907, c. 356, section 5 of which authorized it to acquire lands for an intercepting sewer system, and further provided that when the commissioners to ascertain compensation are appointed the city shall immediately become vested with the title, proceeded to condemn land and the commissioners were appointed, the city could not thereafter abandon the proceedings.—In re City of Syracuse, N. Y., 120 N. E. 203, 224 N. Y. 201.

26.——Injunction.—Where adverse possessor sued to restrain railroad's trespass by destroying her house without compensation, and the injunction was dissolved, after indemnity bond was taken, whereupon the railroad destroyed the house, plaintiff was entitled to have her damages, either upon or independent of the bond.—Tuggle v. Southern Ry. Co., Tenn., 204 S. W. 857.

27.——Just Compensation.—Laws 1913, c. 89, § 13, relating to special improvement districts in cities and towns, is in violation of Const. art. 3, § 14, as to taking or damaging of private property for public use without first making just compensation, since it imposes upon owner obligation to ascertain amount of damages and to make claim for it within specified time, or be debarred from thereafter making any claim. Eby v. City of Lewiston, Mont., 173 Pac. 1163.

28. **False Pretenses**—Evidence.—Where life policy contained clause making it incontestable after one year, except for default of premiums, suicide, or violation of law, misrepresentations in proofs of death as to the cause thereof were immaterial in prosecution for attempt to commit grand larceny by procuring proceeds of policy; the insurer being entitled only to due or satisfactory proof of death.—People v. Alexander, N. Y., 171 N. Y. S. 881.

29. **Fraud**—Waiver.—Plaintiff, who was induced by fraud to give an option terminable at pleasure for purchase of his stock, will, where he discovered fraud before option ripened into a binding contract and did not exercise his right of revocation, be deemed to have waived the fraud.—Thomas v. Birch, Cal., 173 Pac. 1102.

30. **Frauds, Statute of**—Parol Evidence.—Where mining company's sale to canal company of land for right of way was made for cash, with nothing said as to further consideration, parol evidence, in mining company's suit, as to failure of consideration through abandonment of canal enterprise, was properly rejected as affecting title to realty.—Louisiana Sulphur Mining Co. v. Brimstone R. & Canal Co., La., 79 So. 324.

31.——Separable Covenants.—Where lease was invalid under statute of frauds for lack of acknowledgment, covenants not to sublet and to surrender premises in good condition were not so separable from the remainder of the lease as to be enforceable, since it could not be said that the covenants would have been agreed to unless the contract was intended as a single indivisible contract.—Eriksen v. Manufacturers' Distributing Co., Wash., 173 Pac. 1095.

32. **Gaming**—Gambling Device. — Although patrons of punch board as condition precedent were required to purchase a 3-cent post card for 5 cents, there was present the element of chance, the possibility of receiving a knife worth 50 cents or $1.50, in addition to post card, and the device was a "gambling device," within Rev. St. 1909, § 4753.—State v. Turlington, Mo., 204 S. W. 821.

33. **Gifts**—Delivery to Donee.—Title passes where a husband a week before his death voluntarily and without consideration gives his wife a certificate of stock, by delivering it to her and promising to indorse it, so that it will be transferable on the books, though he fails to indorse.—Dirks v. Union Savings Ass'n. S. D., 168 N. W. 578.

34. **Husband and Wife**—Estoppel.—A married woman executing a note for brother's benefit bearing words "value received, for my own use and benefit," who in fact received no benefit, as known to plaintiff bank discounting the note, was not estopped from denying benefit to her separate estate.—First Nat. Bank of Freehold v. Rutter, N. J., 104 Atl. 138.

35. **Injunction**—Labor Union.—In employer's action against labor unions to enjoin maintenance of strike, if certain defendants renounced any intention of maintaining strike to unionize employer's shop, an illegal object, they ceased to be parties to illegal strike, and should not have been enjoined from doing what they had renounced intention of doing.—Baush Mach. Tool Co. v. Hill, Mass., 120 N. E. 188.

36. **Insurance**—Accident. — While, strictly speaking, a means may be accidental only when disassociated from any human agency, such interpretation is not recognized in the law of accidental insurance, but any event occurring without expectation of person affected is accidental, though it would not have happened but for his voluntary act.—Grosvenor v. Fidelity & Casualty Co. of New York, Neb., 168 N. W. 596.

37.——By-laws.—A by-law of a fraternal insurance company, providing that no action can be brought on a policy unless proof of death be furnished within one year, nor unless action is commenced within two years, does not apply, where plaintiff must rely upon Vernon's Sayles' Ann. Civ. St. 1914, art. 5707, relating to presumption of death, to establish death.—Supreme Lodge, Knights of Pythias, v. Wilson, Tex., 204 S. W. 891.

38.——Cancellation.—Where life insurer, before canceling policy for nonpayment of a premium, gave insured due notice of date when premium would fall due, of due date of note, of intention to cancel unless it was paid, and of willingness to reinstate policy if premium and note were paid, or premium and interest on note, insurer having died after cancellation, full amount of policy is not due.—Darby v. Equitable Life Assur. Soc. of the United States, La., 79 So. 329.

39.——Evidence.—In action against accident insurer for injury sustained on train, testimony of trainmen as to whether any complaint was made to them by any one at time of accident was properly rejected.—Holt v. Great Eastern Casualty Co., Utah, 173 Pac. 1168.

40.——Insolvency.—Where a life insurance company is adjudged insolvent, the claims existing in behalf of its policy holders are in the nature of damages for a breach of the contract, which occurs upon the dissolution of the company.—Boyd v. Wright, Ga., 96 S. E. 388.

41.——Total Disability.—That trainman was discharged for color blindness would not entitle a recovery under benefit certificate providing that members suffering complete and permanent loss of sight of both eyes should be "totally disabled," but not providing that the term should mean totally disabled for railroad work.—Kane v. Brotherhood of Railroad Trainmen, Neb., 168 N. W. 598.

42. **Intoxicating Liquors**—Evidence.—In a prosecution against an apothecary for keeping liquors for sale, but which he claimed were medicines allowed to be sold by him as included in the United States Pharmacopoeia, Dispensatory, and National Formulary, authorized by Rev. St. 1916, c. 20, § 17, it was error to exclude the edition of the Pharmacopoeia of 1905 and the National Formulary of 1907; they being the editions intended by the statute.—State v. Holland, Me., 104 Atl. 159.

43. **Landlord and Tenant** — Arbitration. — Where a lease provided for arbitration as a prerequisite to forfeiting the lease for violation of its covenants, a landlord could not forfeit his tenant's lease for making alterations without written permission, where he had not offered to submit the controversy to arbitration.—Isaac H. Blanchard Co. v. Rome Metallic Bedstead Co., N. Y., 171 N. Y. S. 890.

44.——Misrepresentation.—Where leasing of plaintiff's premises was done by others so that plaintiff did not know who were his tenants, representation by defendant seeking a lease that he was tenant occupying premises was material where plaintiff in reliance on representation made lease which he would not otherwise have made (quoting Words and Phrases, Second Series, Material Misrepresentation).—Nimmo v. O'Keefe, Tex., 204 S. W. 883.

45.——Surrender.—Under a lease obligating tenant, upon 30 days' notice, to surrender premises and remove all obstructions, buildings, or improvements therefrom, tenant did not acquire title to structure on the premises as it existed at time of lease, nor any right to the material of which it was composed.—Powers v. Central of Georgia Ry. Co., Ga., 96 S. E. 386.

46.——Unlawful Detainer.—Plaintiff in unlawful detainer where in defendant has given appeal bond and retained possession is not limited to recovery under Rev. Laws 1910, § 5477, after recovery on main issue, but may bring independent action on bond against principal and sureties or sureties separately.—American Surety Co. v. Williams, Okla., 173 Pac. 1132.

47. **Malicious Prosecution**—Probable Cause. —That criminal prosecution against plaintiff instituted by defendant was dismissed because of failure of defendant, the prosecutor therein, to appear at trial, raises no presumption of want of probable cause which will relieve plaintiff of the burden of establishing want of probable cause in an action for malicious prosecution.—Remington Typewriter Co. v. Nolan, U. S. C. C. A., 250 Fed. 685.

48. **Master and Servant**—Course of Employment.—Where a servant employed in wrecking buildings was burned while lighting a cigarette by the match igniting a turpentine soaked bandage on his hand, the injury was one arising out of the employment; indulgence in tobacco satisfying a natural want and being necessarily contemplated by the employer.—Whiting-Mead Commercial Co. v. Industrial Accident Commission, Cal., 173 Pac. 1105.

49.——Course of Employment.—Where shop employe was killed immediately after day's work while walking toward shop exit, his death arose out of and in course of employment, although on way out of shop he was not using board walk intended to be used by employes going to and from work; there being no enforced rule requiring use thereof.—Baltimore Car Foundry Co. v. Ruzicka, Md., 104 Atl. 167.

50.——Dependency.—Laws Alaska 1913, c. 45, §§ 1, 4, providing a remedy for employe's wrongful death according to the spirit of the California law, not construed in any Alaska case, will be construed following the California statute as an act for compensation of dependents.—McManus v. Red Salmon Canning Co., Cal., 173 Pac. 1112.

51.——Industrial Accident Commission. — Where plaintiff insured "all" defendant's employes, both believing that employes in different work in a different county were not covered, the policy stating that the work was in one county only, defendant thinking no insurance for the different work was required, but the Industrial Accident Commission awarded compensation to such a workman and required plaintiff to pay it, plaintiff could recover the amount from the employer.—United States Fidelity & Guaranty Co. v. Taylor, Md., 104 Atl. 171.

52.——Promise of Repair.—A petition alleging employer negligently furnished employe a delivery wagon that was defective, unfit, and unsafe to be used as to certain parts that were loose and unsafe, and that employer promised to remedy such defective condition, and assured employe of the safety of the wagon in the meantime, held to state a cause of action.—Erwin v. Collum Commerce Co., Mo., 204 S. W. 820.

53.——Respondeat Superior.—Where a mother kept an automobile for the use of her family, and a sixteen-year-old daughter took it in her mother's absence, turned it over to a stranger, who, in the daughter's absence, operated it so negligently as to kill plaintiff's intestate, the mother was not responsible.—Wilde v. Pearson, Minn., 168 N. W. 582.

54. **Mechanics' Liens**—Privity.—Though stop notices have been served by mechanic's lien claimants on the owner, the contractor suing owner had a "cause of action" against him within attorneys lien statutes in his own right, or in right of noticing claimants, so that amount due his attorney is lien prior to liens of noticing claimants.—Brunetti v. Grandi, N. J., 104 Atl. 139.

55.——Description of Property.—A description in a mortgage, giving three sides and all the corners, but omitting the fourth side, does not invalidate the mortgage; the fourth side being bounded by public street and reference being made to the plat.—Rix v. Peters, Ark., 204 S. W. 845.

56. **Municipal Corporations** — Contributory Negligence.—Where a pedestrian endeavoring to pass through a narrow alley obstructed by the city's horse and cart stood about a foot from the horse's head and remained there while the driver attempted to move the horse so that she could pass, the horse's front hoof striking her on the instep, she was negligent.—Seidl v. City of Baltimore, Md., 104 Atl. 189.

57.——Local Improvement.—Grading and paving streets, and curbing, guttering, and storm-sewering them, are not necessarily but a "single improvement," within Kirby's Dig. § 5683, limiting cost of a single local improvement.—Bottrell v. Hollipeter, Ark., 204 S. W. 843.

58. **Principal and Agent**—Burden of Proof.—Where in a suit on a forthcoming bond given in a claim case the obligor in the bond files a plea non est factum, denying the authority of the person signing the bond as agent, plaintiff has the burden of establishing the agent's authority to bind his principal.—Coursey v. Consolidated Naval Stores Co., Ga., 96 S. E. 397.

59.——Scope of Agency.—When one appoints an agent to collect money, the agent cannot take merchandise in payment.—Fidelity & Deposit Co. of Maryland v. Brocks Garage, N. J., 104 Atl. 132.

60. **Railroads**—Contributory Negligence.—Although an automobilist saw a train approaching when 20 feet from the track, and could have stopped within 5 feet, but, owing to defendant's failure to give statutory signals, became confused and scared, he will not be held guilty of contributory negligence, as matter of law, in not stopping before he reached the track.—Gillispie v. Pryor, Mo., 204 S. W. 835.

61.——Operation of Locomotive.—A railroad which emitted smoke upon hotel premises by the improper operation of locomotives was not liable to the owners for cost of removing dining room to where it would be less affected.—Matthews v. New York Cent. & H. R. R. Co., Mass., 120 N. E. 185.

62.——Stop, Look, Listen.—The driver of an automobile crossing a railroad track is not required to stop, look, and listen at the most advantageous place; all that is required being the exercise of ordinary care.—Alloggi v. Southern Pac. Co., Cal., 173 Pac. 1117.

63. **Replevin**—Damages.—In claim and delivery, where the property taken has a usable value, the measure of damages is value of property at time of taking, with the reasonable value of the use of property from such time to date of judgment.—Tannahill v. Lydon, Idaho, 173 Pac. 146.

64.——Judgment.—Where plaintiff in replevin obtains possession of a motor car and has the same repaired, and judgment goes for defendant, defendant is entitled to the possession of the car without paying for the repairs, and in an action by defendant on the bond it is no defense that there is a lien on the automobile for the repairs.—Naylor v. Knapp, N. J., 104 Atl. 131.

65. **Sales**—Breach of Warranty.—In action on note for price of automobile, defense being breach of warranty, plaintiff's president could testify that he had instructed salesman not to warrant the automobile.—Lewis v. Farmers' & Mechanics' Nat. Bank of Ft. Worth, Tex., 204 S. W. 888.

66.——Damages.—In a contract for 600 bales of linter, "each car to be considered a separate contract," measure of damages for non-delivery, purchaser having rejected part of the cotton, would be the difference between the price agreed to be paid and the prevailing market price on the date in which the tender of each car was made.—Dallas Waste Mills v. Texas Cake & Linter Co., Tex., 204 S. W. 868.

67.——Evidence.—Prayer of seller of eggs that if evidence showed defendant purchased at given price, eggs to be placed in seller's cooler, and that, on eggs being placed there and invoice sent, he was to pay for them, then placing of eggs in cooler vested title in buyer, was erroneous, as failing to recognize requirement of actual receipt, under Sales Act.—Castle v. Swift & Co., Md., 104 Atl. 187.

68.——Rescission.—Where plaintiff purchased goods to be canned and labeled with his name, agreeing to deliver the labels by a certain date, but the goods were not packed before such date and were never delivered, the mere fact that he failed to send the labels by such date did not constitute such breach as warranted rescission by the other, especially where plaintiff wrote, asking when he should send the labels, and received no reply.—Ady v. Jenkins, Md., 104 Atl. 178.

69.——Rescission.—There was waiver of right to rescind purchase of stallion under contract guaranteeing it would for two years have certain ability as foal-getter, where though having full knowledge in six months, buyer did not offer to rescind till near end of two years, and after offer used stallion as his own.—McCready v. Vakiner, S. D., 168 N. W. 579.

70. **Specific Performance** — Exchange of Lands.—Contract to exchange lands, describing property as "a vacant lot on the west side of P. street, in Atlanta, Ga., said lot being between T. avenue and G. street, size 40x185, more or less, to an alley in the rear," was sufficient basis for a suit for specific performance.—McIntosh v. Roane, Ga., 96 S. E. 387.

71.——Waiver.—Where seller under contract for sale of land refused to accept an installment on the ground that buyer was in default, fact being seller had waived provisions as to time of payments, buyer could either wait a reasonable time for defendant to withdraw her rescissions, or insist upon his right to carry out the agreement according to its terms, or tender in full the amounts due under the agreement.—Grippe v. Davis, Conn., 104 Atl. 165.

72. **Street Railroads**—Apparent Danger.—A motorman is justified in assuming, even until it is too late to avoid an accident, that one approaching the track and whose view is unobstructed will heed the apparent danger and have some regard for his own safety.—Sammons v. New Orleans Ry. & Light Co., La., 79 So. 320.

73. **Telegraphs and Telephones**—Franchises.—Special franchises granted by the state to a telegraph company to construct its lines in streets and highways, being broader than additional or supplementary franchises subsequently granted to the company by Congress, could coexist with the federal franchises.—People ex rel. Postal Telegraph-Cable Co. v. State Board of Tax Com'rs, N. Y., 120 N. E. 192, 224 N. Y. 167.

74.——Highway.—Telegraph company maintaining poles in post road crossed by railroad at grade cannot enjoin township and county from changing grade of road because it would interfere temporarily with poles, or recover cost of changing location of poles, and of restoring them to former location; easement being subject to public rights in highway.—Postal Telegraph Cable Co. of New Jersey v. Delaware, L. & W. R. Co., N. J., 104 Atl. 141.

75.——Intent.—Where a telegraph company, to which is delivered a message for transmission to another point in the state has an interstate and an intrastate route to such point, both equally convenient, mere fact that company sent message by interstate route does not show intent to avoid effect of Rev. St. 1909, § 3330.—Taylor v. Western Union Telegraph Co., Mo., 204 S. W. 818.

76. **Trust Company**—Addition to Capital.—If trustees owning stock in trust company had taken cash, instead of accepting new stock issued by company, as they had option to do, and had sold their rights to subscribe to new stock, which were valuable, money obtained from sale would have been an addition to the capital, not to income.—Smith v. Cotting, Mass., 120 N. E. 177.

77.——Accounting.—An account as trustee need not be prepared by the trustee personally, but may be prepared by an accountant or attorney; and hence serious illness does not excuse failure to file the same pursuant to an order of court.—In re Buchanan's Estate, N. Y., 171 N. Y. S. 953.

78. **Vendor and Purchaser**—Nullifying Contract.—If persons desiring to buy a plantation deceived the selling company, the deception bearing on a material part of the promise of sale, the company could nullify the contract, but a stranger to the contract could not.—Herndon v. Wakefield-Moore Realty Co., La., 79 So. 318.

79. **Wills**—Mutual Wills.—An agreement between four sisters, requiring each of them to execute an unalterable, irrevocable will leaving all property to her descendants, and if no descendants to the survivors of the four sisters, and to give $1 to each of her brothers and to her husband, should she marry, and providing, further, that in case she marries after making will she should make another similar will, with only such changes as were necessitated by marriage, was based upon a good consideration.—Kloberg v. Teller, N. Y., 171 N. Y. S. 947.

80. **Work and Labor**—Voluntary Services.—Where nephew's services to uncle were voluntary, made without expectation of pay, and under circumstances from which no implication of an obligation to pay arose, a promise to pay for services will not be implied from the fact that uncle requested nephew's help.—Dobbin v. Dobbin, Mo., 204 S. W. 918.